



POLICE DEPARTMENT

March 27, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jerome Allen
Tax Registry No. 903326
108 Precinct
Disciplinary Case No. 2013-10601

The above-named member of the Department appeared before me on March 6, 2015, charged with the following:

1. Police Officer Jerome Allen, while off duty and assigned to the Patrol Borough Manhattan South Task Force, on September 5, 2013, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said police officer engaged in a verbal dispute and physical altercation with off-duty Police Officer Keith Morse.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED
CONDUCT - GENERAL REGULATIONS

The Department was represented by Joshua Kleiman, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Police Officer Keith Morse as a witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After evaluating the testimony presented at the hearing, and assessing the credibility of the witnesses, this tribunal finds that the Department satisfied its burden of proof. Accordingly, Respondent is found guilty of the charge set forth above.

FINDINGS AND ANALYSIS

The resolution of this case turns purely and simply on the question of credibility. Thus, it is left to this tribunal to try to sort out which version was closest to the truth. After carefully considering the conflicting accounts, this tribunal finds Morse to have been more credible than Respondent and concludes that his version of events was the more logical one under the circumstances.

The following is a summary of the undisputed facts. Respondent and Police Officer Keith Morse have known each other since 1997. Over the years they shared assignments and became friends. At the time of this incident, they were stationed at Manhattan South Task Force but worked different assignments and no longer socialized.

At approximately 1630 hours on September 5, 2013, Morse walked out of his command and proceeded west on 42nd Street toward the police parking lot. He was talking on his cell phone and laughing. Respondent was nearby waiting for another officer who had offered him a ride. Respondent saw Morse laughing and looking in his direction. When Morse approached, Respondent made a comment. Although the sum and substance of the conversation that ensued is in dispute, Respondent alluded to "getting what [is] deserved" and "bloodshed." Morse commented that they were "Christians." The conversation ended and Respondent walked toward the police parking

lot with the colleague he had been waiting for. Morse continued to walk to the same location, although behind Respondent. When they arrived at the parking lot, Morse addressed Respondent and they ended up standing in close proximity to each other as they exchanged words.

Morse reported the incident to the command's Integrity Control Officer. As a result, Respondent and Morse were modified and transferred to other commands. Morse accepted a command discipline and the forfeiture of four vacation days for his role in this incident. Both witnesses agreed that they had no contact earlier that day.

At issue is whether Respondent engaged in misconduct by taking part in an off-duty verbal dispute and physical altercation with Morse. Not surprisingly, the witness accounts differed on critical points.

At the hearing, Morse admitted that he was talking and laughing on the phone as he walked out of his command and in Respondent's direction. As he approached, he heard Respondent tell him, "You're going to get what you deserve." Morse stopped, looked at Respondent, and asked what he was talking about. When Respondent repeated his statement, Morse was surprised and responded, "Well, what do I deserve?" According to Morse, Respondent commented, "something along the line of bloodshed, blood for blood, or bloodshed...." Morse was taken aback and asked, "We are Christians so what is bloodshed?" Respondent explained, "There's bloodshed in the Bible all the time....or people are shedding blood in the Bible all the time." Another officer approached and Respondent walked away toward the parking lot. Morse walked behind them because his vehicle was also in the same lot.

Morse testified that before reporting the incident he needed to understand what Respondent meant to communicate. When they both arrived at the parking lot, Morse asked Respondent whether he was serious. Respondent came toward him, put his foot on Morse's foot, and pressed his chest and forehead against Morse's chest and forehead. Respondent then answered, "Yes, I'm serious. What are you going to do about it?" Morse replied that he was not "going to do anything" because he did not want to lose his job. When Respondent said he would sign an affidavit, Morse raised his hands and as he walked away replied, "I'm a southern boy and I know you're from Brooklyn and I know you like to stab people in the back." Morse understood that the reference to an affidavit meant that he would not press charges. Morse reported the encounter because he felt threatened. He recognized that it was his duty to deescalate potentially volatile encounters. He further acknowledged that prior to this incident, he had intentionally stopped working and socializing with Respondent. (Tr. 12-35)

Respondent testified that he saw Morse walking in his direction with "a smirk on his face" as he talked on his cell phone. Although Respondent believed they were still friends, and they had had no contact that day, he assumed Morse was "mocking" him. According to Respondent, as Morse approached he said, "What's so funny" and added, "We all get what we deserve." At trial, Respondent explained what he meant by this comment:

Well, I meant it in a religious context. You know, we all get what we deserve in life. At the end of this life, God decides if you were a good person or not basically, and that's all I meant by that. Nothing more than that.

Morse asked, "What did I do to you now, Allen? You're a Christian." Respondent understood that to mean that he should be a "passive person" and that Respondent

“wouldn't be aggressive with” Morse. Respondent replied, “Christians fight.... [W]hen Christians were being crucified, they shed blood” and “had to fight to save themselves.” When Morse and Respondent converged at the corner of the police parking lot, Morse asked, “What are you going to do?” Respondent testified that he turned around and found himself “nose-to-nose” with Morse. Morse made a comment about “Brooklyn style,” raised his hands and turned away. Respondent testified that this was a minor incident and he did not feel threatened by Morse. He further explained that he did not understand how Morse could interpret his comments as threatening. (Tr. 40-56)

This tribunal is being asked to reconstruct the most probable course of events on the basis of conflicting testimonial accounts alone. Several key factors convinced this tribunal that Morse was telling the truth. In making this assessment I found Morse to be an open and straightforward witness with a less compelling motive to lie about this encounter. I also found his account to be inherently believable because it was more logical and consistent with common sense and general human experience.

In contrast, this tribunal found Respondent's account to be inherently incredible. In fact, Respondent's explanations were riddled with internal contradictions and unreasonable conclusions. From the start, Respondent testified that he and Morse were friends, yet he immediately assumed that Morse was mocking him. It is highly doubtful that a person would jump to that conclusion upon seeing a “friend” laughing on the phone. It is much more likely that Respondent described Morse as a friend, and denied their estrangement, in an attempt to minimize the impact of his comments.

This tribunal was also troubled by Respondent's explanation that his reference to God's judgment was a general religious or philosophical statement. This justification had

the ring of an after-the-fact rationalization for the provocative language that he purposely used because he believed someone was "mocking" him. Thus, contrary to Respondent's assertions, it was logical to interpret his references to judgment and bloodshed as a threat.

Within this context, I further credited Morse's testimony that Respondent initiated the threatening physical contact in the parking lot and came toward him in an aggressive manner. Accordingly, I find that the Department has met its burden of proof as to the charge and finds Respondent guilty of the charge.

PENALTY

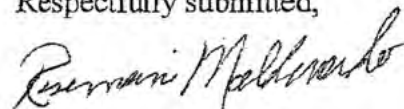
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on August 30, 1993. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate seeks a forfeiture of 10 vacation days as the appropriate penalty. Penalties for comparable misconduct range from 8 to 15 days. *Disciplinary Case No. 2010-2061, 2012* (Police officer with four years of service and no prior disciplinary record negotiated a penalty of 8 vacation days for making threatening statements during a verbal dispute with an individual); *Disciplinary Case No. 2013-11044, 2014* (Five-year police officer with no prior disciplinary record negotiated a penalty of 15 vacation days for engaging in a verbal dispute with a security guard assigned to a condominium complex, failing identify herself to on-duty responding officers, and neglecting to report the incident to the Department); *Disciplinary Case No. 2010-2696, 2011* (Eight year police officer with no prior disciplinary record negotiated a

penalty of 10 vacation days for approaching a traffic enforcement agent (TEA) and attempting to persuade said TEA from issuing a summons to a vehicle resulting in a verbal dispute); *Disciplinary Case No. 1998-72842, 1998* (Ten-year officer with no prior disciplinary record forfeits 15 vacation days for screaming obscenities at an off-duty lieutenant during an off duty traffic dispute); *Disciplinary Case No. 2013-10660, 2014* (Thirteen-year detective with no prior disciplinary negotiated a penalty of 10 vacation days for, while off duty, engaging in conduct prejudicial to the good order of the Department, in that, he used threatening language during a verbal dispute with his spouse and was found to be in possession of a unauthorized duplicate shield).

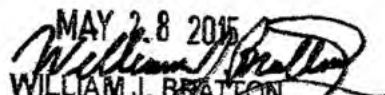
Given Respondent's 22-years of service without any prior disciplinary history, this tribunal believes that the forfeiture of 8 vacation days would be a more appropriate penalty in this case.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

MAY 28 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

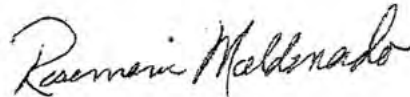
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JEROME ALLEN
TAX REGISTRY NO. 903326
DISCIPLINARY CASE NO. 2013-10601

Respondent was appointed to the Department on August 30, 1993. In 2013, Respondent received an overall rating of 3.0 "Competent" on his annual performance evaluation. He was rated 3.5 "Highly Competent/Competent" in 2012, and 3.5 "Highly Competent/Competent" in 2011. [REDACTED]
[REDACTED]

Respondent has no prior disciplinary history and has received no medals or commendations.

For your consideration.



Rosemarie Maldonado
Deputy Commissioner Trials